

10042930-101801

REMARKS

With this Preliminary Amendment, Claims 5-45 have been canceled without prejudice and Claims 46-59 have been added. Thus, after entry of this Amendment, Claims 1-4 and 46-59 are pending in the instant Application. Applicants expressly reserve the right to prosecute claims drawn to canceled subject matter in one or more continuation, divisional or continuation-in-part applications.

AMENDMENT OF SPECIFICATION AND ADDITION OF ABSTRACT

The specification has been amended to delete a hyperlink and to provide the correct address for the American Type Culture Collection international depository. Further, an Abstract of the Disclosure as required by 37 C.F.R. § 1.72(b) is included with this response. No new matter is added by the amendment of the Specification and submission of the Abstract. Accordingly, entry into the instant Application is proper and respectfully requested.

ADDITION OF NEW CLAIMS

Support for new Claims 46, 47-49, 50, 51, 52, 53, 54-57, 58 and 59 may be found in the Specification at page 24, lines 27-29, page 26, lines 32-35, page 26, line 35 to page 27, line 5, page 27, lines 6-7, page 26, lines 31-32, page 8, lines 3-9, page 27, lines 24-25 and page 26, lines 31-32, respectively.

No new matter is added by the addition of Claims 46-59. Accordingly, entry into the instant Application is proper and respectfully requested.

NEW DECLARATION

The declaration of Gregory Whited filed on December 14, 1999 was defective because Mr. Whited made non-initialed and non-dated changes. A new declaration by Mr. Whited filed on August 30, 2001, is hereby submitted which obviates these defects.

CONCLUSION

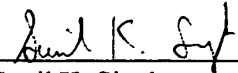
Applicants respectfully submit that all pending Claims of the captioned Application satisfy all requirements for patentability and are in condition for allowance. An early indication of the same is therefore respectfully requested.

No fees are believed due in connection with this Amendment. However, the Commissioner is authorized to charge any required fee not included with this Preliminary

Amendment or credit any overpayment to Pennie & Edmonds LLP Deposit Account No. 16-1150 (order no. 9342-029-999). A duplicate copy of this sheet is enclosed for such purpose.

Respectfully submitted,

Date October 18, 2001


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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE SPECIFICATION

Substantial sequence identity can be determined by the comparison of the entire genomic sequences of a putative *C. viterbiensis* and JW/MS-VS5^T. Alternatively, substantial sequence identity can be determined by the comparison of the 16S rDNA sequences of a putative *C. viterbiensis* and JW/MS-VS5^T. The sequence of all or a portion of the genome of JW/MS-VS5^T and a putative *C. viterbiensis*, particularly the sequence of the organisms' 16S rDNA, can be determined by conventional nucleic acid sequencing techniques well known to those of skill in the art (*see, e.g.,* SAMBROOK *ET AL.*, MOLECULAR CLONING, A LABORATORY MANUAL (1989) and CURRENT PROTOCOLS IN MOLECULAR BIOLOGY (Ausubel *et al.*, eds. 1989)). The sequences can then be compared, using methods of sequence comparison well known to the skilled artisan. For example, percent identity can be calculated using the BLAST computer program [version 2.0, available on the World-Wide Web at www.ncbi.nlm.nih.gov. <http://www.ncbi.nlm.nih.gov>. For a description of BLAST] which has been described in the art, (*see, e.g.,* Altschul *et al.*, *J. Mol. Biol.* **215**:403-10 (1990) and Altschul *et al.*, *Nucleic Acids Res.* **25**:3389-3402 (1997)).

C. viterbiensis type strain JW/MS-VS5^T was deposited on August 27, 1999 with the ATCC under the terms of the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for Purpose of Patent Procedure and is designated as ATCC PTA-584. "ATCC" refers to the American Type Culture Collection international depository located at [12301 Parklawn Drive, Rockville, MD 20852 U.S.A] 10801 University Boulevard, Manassas, VA 20110-2209. The designations refer to the accession number of the deposited material.